him by his employer; and he holds it subject to the obligation of using it solely for his employer's benefit during the service, not betraying it at any time to a stranger to the employment, and not in any way using it against the employer after the term of service is ended. This doctrine was carried to its logical development in *Morison* v. *Moat*, *supra*. There it was held that, if the person who receives the secret from the confidential employee is a purchaser for value without notice, he has a full right to use the secret; but if, on the other hand, he is a mere volunteer deriving benefit under a breach of trust, he acquires no beneficial interest in the secret. It seems then that the confidential employee is regarded as a trustee as fully as if the *res* had been, for instance, real estate or stocks and bonds; and the purchaser from him is looked upon in the same light as the purchaser from a trustee of an estate. It is suggested that this is the true principle to apply to the present case; even if no grounds for implying a contract had appeared, the defendant could be restrained from committing a breach of trust.

MAY THE STATE IMPEACH ITS OWN WITNESSES? — That a party cannot impeach the character of his own witness seems to be an established principle of the common law. A generally recognized exception to this rule, however, permits the impeachment of an attesting or subscribing witness to a deed or will. The Supreme Court of Vermont, in a recent case, *State* v. *Slack*, 38 Atl. Rep. 311, has extended this exception by holding that the State may impeach its own witnesses in criminal cases. Apparently there is no authority for such a proposition. It is believed, furthermore, to be untenable on principle.

The reason usually assigned by the courts for making an exception in the case of witnesses to an instrument is that, inasmuch as a party is compelled by law to call such witnesses, he does not therefore present them to the court as worthy of belief. Precisely the same ground underlies the decision in *State* v. *Slack*, *supra*. The court holds it to be "the duty of the State to produce and use all witnesses within reach of process, of whatever character, whose testimony will aid the jury in arriving at the truth, whether it makes for or against the accused, and that, therefore the State is not to be prejudiced by the character of the witnesses it calls." In another place the court says that "the State is bound to call all the witnesses," not being "at liberty to choose and to call whomsoever it will."

If a literal construction of this language be adopted, the court certainly seems to regard it as obligatory upon the State to call every possible witness, including the defendant and the defendant's witnesses. Clearly, in many instances, such a rule could not possibly be put into practice. Even where practicable, it would often result in a needless waste of time and money. Conceivably the court merely means that the number of witnesses in a given case being necessarily limited to such as happen to be cognizant of the facts the State is consequently obliged to call such persons, and should therefore be entitled to impeach their character. This reasoning, however, would operate equally well in favor of the prisoner and both parties to a civil suit; and were such a doctrine thus extended by the courts, the general principle that a party cannot impeach his own witness would have no significance whatever.

In granting to the State this privilege of impeaching its own witnesses,

the court proceeds upon the theory that the State's officers, far from having private interests to subserve, are engaged in the duty of securing equal justice to the State and the accused, and should not, accordingly, be hampered by "a rule without a reason." It is difficult to see, however, why this doctrine is not directly contrary to the prevailing notion that it is the prisoner, and not the State, who is entitled to every protection and advantage possible.

It is submitted that the Vermont court has failed in its attempt to bring the present case within the exception as to instrumental witnesses; for surely the State, like any other party, is "at liberty to choose and to call whomsoever it will." Apparently, therefore, the decision is squarely at variance with the general rule under discussion. That rule may be lessened in significance by restriction within narrow limits. The reasoning underlying it may be subject to criticism. But the rule itself still remains a principle of the common law, and should be abolished, if such action seems desirable, not by judicial decision, but by an act of the legislature.

ADMINISTRATION OF THE ESTATE OF A SUPPOSED DEAD MAN. — The administration in a probate court of the estate of a living man appears at first sight such a palpable absurdity, that it is astonishing that any one should contend for the validity of such a proceeding, and still stranger that any legislature should think of giving legal effect to it. Nevertheless, this has been done. In *Roderigas* v. *East River Savings Institution*, 63 N. Y. 460, the court, with the aid of a statute, refused to allow a distribution of a supposed decedent to be disturbed. This New York case, it is believed, stands absolutely alone. The recent case of *Carr* v. *Brown*, 38 Atl. Rep. 9 (R. I.), represents, however, an attempt to obtain the same result from a Rhode Island statute. This statute provides that when a man has been absent for seven years, and nothing heard from him during that time, the probate court shall have power to grant administration of his estate as if he were dead. The court refused to consider such an administration as valid, as against the supposed decedent, particularly on the ground that the statute is contrary to the provision of the Fourteenth Amendment to the United States Constitution, that no State shall deprive any person of his property "without due process of law." In support of this position they cite an overwhelming weight of authority. Nothing is better established than that, in the absence of statute, the jurisdiction of a probate court depends on the actual fact of the death of the person whose estate is to be dealt with. In point of theory, the question whether the judgment of the court ought, or ought not, to be conclusive on that fact is not so simple as it may appear. The judgment should be conclusive as to all the facts found in it, as against all parties to the suit. In the case of a judgment *in rem*, all persons are made parties for this purpose who have received either actual notice of the suit, or constructive notice from the public seizure of the property by the court. If a probate court proceeded *in rem*, and seized the property before giving judgment, then perhaps advertisement of the seizure might be held to give constructive notice of the suit to the absent owner, and he might be concluded from disputing the judgment. The probate court, however, has never been regarded as proceeding *in rem*, nor does it take possession of the property concerned before granting the letters of administration.

Whatever might be the effect of this Rhode Island statute, in the absence